



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL CASE NO. E008 OF 2020**

**FRANCIS MUGO.....APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

**RULING**

1. By a Notice of Motion dated 23/9/2020 the appellant seeks an order that he be admitted to bail pending appeal on such terms as determined by the court. The grounds advanced to support the application are that the appeal portends overwhelming chances of success and that circumstances have arisen and exist to justify admission to bond in that the appellant is an old man aged over 74 years who the prevailing Covid19 conditions dictate should be confined at home and not held in the crowded prison environment it being underscored that he is not given to absconding court and thus not a flight risk.
2. The application was opposed by the prosecution on the basis of the grounds of opposition filed which assert that the application has no merits because the appeal upon which its grounded has no prospects of succeeding.
3. Pursuant to the direction by the court given on the 9/11/2021, both parties filed respective submissions which they adopted and asked the court to consider without any highlighting. In those submissions both agree to the principles of law applicable being that; the applicant must demonstrate that the appeal has overwhelming chances of success or that there exist exceptional or unusual circumstances which make it unwarranted to deny the appellant of his liberty pending the determination of the appeal.
4. However, in applying the applicable principles to the facts of the case, the two side part ways on the prospects of the appeal succeeding. The applicant is upbeat that the appeal has overwhelming chances of success while the respondent takes the view that any chance in the appeal are no more than overwhelming.
5. To assess the chances of an appeal being successful, the court must of necessity look at the record at trial particularly the proceedings and evidence led before that court in the light of the judgment thereafter arrived at. It thus becomes obvious that in the absence of the proceedings and record of evidence, it is not possible for this court to effectively consider an application for bail pending appeal.
6. I have studied the file and noted that all I have from the record of the trial court is the judgment which is impugned by the appeal. By just reading that judgment I will be unable to form a genuinely informed opinion on the strength or otherwise of the appeal.
7. For the reason that I have no material to help me make a decision, I am unable to find that the appeal presents any chances of success. In the words of **Trevalyan J. in Somo – VS Republic**, *'the most important ground is that the appeal has overwhelming chances of being successful'*. Where that determination cannot be made, then the very foundation upon which the decision must rest get dissipated and the application fails. I order it dismissed.
8. However, I take the age of the applicant to be an important consideration even if not as important as the prospects of the appeal succeeding, if regard is laid of the very difficult situation visited upon the earth by the Covid19 pandemic. For that reason, I do admit the appeal and direct that the trial court file be availed at the earliest opportunity and in all event not later than the 2/6/2021 when thus matter will be mentioned for directions on the way forward.

**DATED, SIGNED AND DELIVERED AT MERU VIRTUALLY VIA MICROSOFT TEAMS ON 6TH MAY 2021**

**P.J.O OTIENO**

**JUDGE**